

REMARKS

Rejection of Claims and Traversal Thereof

In the May 7, 2007 Office Action,

Claim 30 was rejected under 35 U.S.C. §101;

Claims 1-29 and 31 were rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 7,119,119;

Claim 31 was rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,903,082;

Claims 1-14 and 31 were rejected under 35 U.S.C. §102(b) as being anticipated by Ekwuribe et al, (U.S. Patent No 6, 583,128, hereinafter Ekwuribe '128;

Claims 1-29 and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ekwuribe '128 in view of the Merck Manual

Applicants traverse these rejections and insist that none of the cited references alone or in combination defeat the patentability of the presently claimed invention which.

Petition for Delayed Priority Claim

Applicants have amended the specification to include a claim of priority to co-pending No. 11/144,093 filed on June 3, 2005 titled "IMMUNOREGULATORY COMPOUNDS AND DERIVATIVES AND METHODS OF TREATING DISEASES THEREWITH" issued on October 10, 2006 as US Patent No. 7, 119,119 and having a priority date of August 29, 2001 which is the filing date of U.S. Patent No. 6,583,128. Notably, co-pending U.S. Application No. 11/144,093

Applicants are entitled to claim priority to this application because there is at least one common inventor, Nnochiri N. Ekwuribe, and the specification provides ample support for the composition and methods of the presently claimed invention.

Notably, the Office pointed to this support by requiring applicants to file Terminal Disclaimers disclaiming any patent term extending beyond the expiration date of U.S. Patent No. 7,119,119 and 6,903,082. Further, the parent priority patent U.S. Patent No. 6,583,128 has been cited as defeating the novelty and inventiveness of the claimed invention. Interestingly, all three cited patents have exactly the same specification.

Thus, the present application is entitled to the priority date of U.S. Patent No. 7,119,119. Applicants have included herewith a petition under 37 CFR 1.78((a)(3) to the Commissioner for Patents, requesting the acceptance of an unintentionally delayed claim under 35 USC 120 (Appendix A). Applicants have also included the fee under §1.17(t) (\$1370.00). Further, applicants have included a statement that the entire delay between the between September 25, 2007, the date the claim was due under 37 CFR §1.78(a)(2)(ii) and the date of September 7, 2007 (37 CFR §1.78(a)(5)(ii)) the date this claim was filed, was unintentional.

As such, applicants respectfully request that all claims recited in the present application be given the effective filing date of August 29, 2001.

Obvious-type Double Patenting Rejections

Claims 1-29 and 31 were rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 7,119,119 and claims 1-5 of U.S. Patent No. 6,903,082. Applicants have included herewith three terminal disclaimers in Appendix B, for US Patent Nos. 7,119,119, 6,903,082 and 6,583,128 thereby obviating these rejections. Applicants have included herewith in Appendix C proof that the undersigned attorney has the right to sign the Terminal Disclaimer for applicants.

Lack of Novelty and Inventive Step Rejections

According to the Office U.S. Patent No. 6,583,128 defeats the novelty and renders obvious the presently claimed invention. In light of the amended claim of priority, the cited patent is no longer competent prior art.

Petition for Extension of Time/Fees Payable

The applicants hereby petition for a one month extension of time, extending the deadline for responding to the May 7, 2007 Office Action from August 7, 2007 to September 7, 2007. The entry of this petition results in a petition fee of \$120.00. Further, applicants have included three terminal disclaimers with a fee due of \$390.00. Applicants have included herewith a Petition for Late Claiming of Priority resulting in an additional fee of \$1370.00.

The fee of \$1880.00 is being paid by electronic transfer. In the event an additional fee is found due, the U.S. Patent and Trademark Office is hereby authorized to charge any additional amount necessary to the entry of this amendment to Deposit Account No. 13-4365 of Moore & Van Allen PLLC.

Conclusion

Applicants have satisfied the requirements for patentability. All pending claims are free of the art and fully comply with the requirements of 35 U.S.C. §112. It therefore is requested that Examiner Spivack reconsider the patentability of pending claims in light of the distinguishing remarks herein and withdraw all rejections, thereby placing the application in condition for allowance. Notice of the same is earnestly solicited. In the event that any issues remain, Examiner Spivack is requested to contact the undersigned attorney at (919) 286-8089 to resolve same.

Respectfully submitted,



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Appendix A